

² Appellant has a previously accepted occupational disease claim for binaural hearing loss under OWCP File No. xxxxxx200. OWCP granted him a schedule award for 90 percent permanent impairment due to binaural hearing loss.

disparate treatment dating back to June 2001, by supervisor R.D., who isolated appellant from coworkers, made him create his own work assignments, and find funding for his assigned tasks. Appellant noted that R.D. was later removed from his post for discriminating against another employee. He also expressed dissatisfaction with work assignments in June 2008, June 2012, and May and June 2015. OWCP assigned the claim OWCP File No. xxxxxx814.

By decision dated December 21, 2017, under OWCP File No. xxxxxx814, OWCP denied the claim finding that appellant had not established the alleged June 2001 supervisory harassment as factual. It further found that the remainder of his allegations pertained to administrative functions of the employing establishment not considered to be within the performance of duty.

On January 30, 2018 appellant, through counsel, requested reconsideration and provided additional evidence. By decision dated March 13, 2018, OWCP denied modification.

On July 12, 2018 appellant, through counsel, requested reconsideration. Counsel provided July 2017 statements from supervisor R.N. and coworker J.K. asserting that appellant's hearing loss adversely affected his work activities.

By decision dated April 16, 2019, OWCP modified its March 13, 2018 decision, finding that appellant had established that, in June 2001, his supervisor subjected him to "emotional abuse" and an "isolated environment." It denied the claim, however, citing to the legal principle that unsubstantiated allegations of harassment or discrimination were not compensable.

The Board, having duly considered the matter, concludes that the case is not in posture for decision.³ FECA provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as it considers necessary with respect to the claim.⁴ The reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁵

OWCP's April 16, 2019 decision denied appellant's claim for failing to establish any compensable factors of employment. The Board finds, however, that OWCP did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that he could understand the basis for the decision, as well as the precise defect and the evidence needed to overcome the denial of his emotional condition claim.⁶ In its April 16, 2019 decision, OWCP found that appellant had established as factual that, in June 2001, his supervisor subjected him to emotional abuse and an isolated environment. It then recited the legal principle that mere perceptions of harassment were not compensable under FECA, but failed

³ *N.M.*, Docket No. 17-0262 (issued July 3, 2017).

⁴ 5 U.S.C. § 8124(a)(2); 20 C.F.R. § 10.125.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5(c) (February 2013). *See also G.S.*, Docket No. 14-1933 (issued November 7, 2014).

⁶ *J.S.*, Docket No. 18-0513 (issued March 1, 2019); *K.J.*, Docket No. 14-1874 (issued February 26, 2015); *J.J.*, Docket No. 11-1958 (issued June 27, 2012).

explain why that principle applied to accepted emotional abuse.⁷ It is axiomatic that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁸

On remand OWCP shall make appropriate findings of fact regarding the employment events alleged by appellant.⁹ Following this and any other further development deemed necessary, it shall issue a *de novo* merit decision.¹⁰

IT IS HEREBY ORDERED THAT the April 16, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

⁷ OWCP's procedures provide that, when denying an emotional condition claim, it must first determine whether the events actually occurred. It should then distinguish between those workplace activities and circumstances which are factors of employment and those which are outside the scope of employment for purposes of compensation by outlining work-related and nonwork-related elements into three parts. If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence. *Supra* note 5 at Chapter 2.800.5a (June 2011). *D.H.*, Docket No. 17-1529 (issued February 14, 2018).

⁸ *L.S.*, Docket No. 18-1471 (issued February 26, 2020); *see O.G.*, Docket No. 18-0359 (issued August 7, 2019); *D.R.*, Docket No. 16-0605 (issued October 17, 2016); *William H. Fortner*, 49 ECAB 324 (1998).

⁹ *A.R.*, Docket No. 11-1949 (issued April 16, 2012).

¹⁰ *C.W.*, Docket No. 14-0693 (issued January 12, 2016).

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Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board